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IN THE

# Supreme Court of the United States

October Term, 1971.

No. 71-266

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR. and WILLARD WIRTZ, Trustees of the Property of PENN CENTRAL TRANSPORTATION COMPANY, Debtor,

*Petitioners,*

*v.*

UNITED TRANSPORTATION UNION, LOCAL 63E,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

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IN THE

# Supreme Court of the United States

OCTOBER TERM, 1971.

No.

GEORGE P. BAKER, RICHARD C. BOND, JERVIS LANGDON, JR. AND WILLARD WIRTZ, TRUSTEES OF THE PROPERTY OF PENN CENTRAL TRANSPORTATION COMPANY, DEBTOR,

*Petitioners*

*v.*

UNITED TRANSPORTION UNION, LOCAL 63E,

*Respondents.*

## PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT.

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Sixth Circuit entered in the above-entitled case on May 27, 1971,[1] *sub nomine* United Transportation Union, Local 63E v. Penn Central Company, No. 20,972.

1. Petitioners (Defendants below) were erroneously designated in the caption of the case as Penn Central Company. Defendant, when the action was filed, was Penn Central Transportation Company. On June 21, 1970 said Company filed its petition for reorganization pursuant to Section 77(b) of the Bankruptcy Act, 11 U.S.C.A. 205, and is now known as "George P. Baker, Richard C. Bond, Jervis Langdon, Jr. and Willard Wirtz, Trustees of the property of Penn Central Transportation Company, Debtor".

## CITATIONS TO OPINIONS BELOW.

The preliminary opinion of the District Court is unreported and is printed in Appendix B hereto, *infra* page 34. The opinion of the District Court granting a preliminary injunction, printed in Appendix C hereto, *infra* page 41, is unreported, but unofficially reported at 77 L.R.R.M. 2535. The opinion of the Circuit Court of Appeals, printed in Appendix D hereto, *infra* page 47, is reported in — Fed. 2d —, unofficially reported at 77 L.R.R.M. 2537.

## JURISDICTION.

The judgment of the Circuit Court of Appeals was entered on May 27, 1971 (Certified Record page 4). The jurisdiction of this Court is invoked under 28 U.S.C.A. Section 1254(1).

## QUESTIONS PRESENTED.

1. Whether a District Court has jurisdiction to issue an injunction on application by a labor union against a railroad subject to the Railway Labor Act from taking an action alleged by plaintiff union to be in violation of existing collective agreements.

2. Whether the dispute involved was subject to the procedures of Section 3 of the Railway Labor Act, or was properly held by the Courts below to bring into play the application of Section 6 of the Railway Labor Act.

3. Whether the Norris-LaGuardia Act, construed in relation to the Railway Labor Act, deprived the District Court of jurisdiction to issue an injunction in this case.

## STATUTES INVOLVED.

The statutory provisions involved are Section 2, First, Second and Sixth, Sections 3 and 6 of the Railway Labor Act, 45 U.S.C.A. 151 through 156, and Sections 1, 7 and 13 of the Norris-LaGuardia Act, 29 U.S.C.A. Section 101 *et seq.* They are printed in Appendix A hereto, *infra* pages 17 to 33.

## STATEMENT.

United Transportation Union (hereafter UTU), is a labor union and is the duly designed and authorized representative under the Railway Labor Act of certain firemen employed by Penn Central Transportation Company, a common carried by railroad. Plaintiff Local 63E is a constituent local union of UTU. On January 7, 1970 Local 63E filed a complaint for injunction to restrain certain changes by railroad in the operation of crew boards at Stanley Yard, Toledo, Ohio. The union's motion for a preliminary injunction, after hearing, was denied by the United States District Court for the Northern District of Ohio, Western Division on January 27, 1970. However, after trial on plaintiff's complaint for injunction, a permanent injunction was granted on April 28, 1970. The granting of the permanent injunction was affirmed by the Court of Appeals for the Sixth Circuit on May 27, 1971.

The injunction was based upon an alleged violation of a collective agreement.

That collective agreement (Ex. 1, 160a),[2] entered into between defendant and the United Transportation Union (formerly Brotherhood of Locomotive Firemen & Enginemen), governs the rates of pay, rules and working condi-

2. Page references are to "Appendix to the Brief for the Defendant-Appellant," which was the record on appeal below. A certified copy of that appendix is included in the Certified Record on Petition for Writ of Certiorari on file in this Court.

tions of the employees represented by Local 63E and other local unions of the UTU.

Regulation 5-B-2 of said agreement reads as follows:

> "5-B-2. Crew boards (h). Crew boards showing the order in which crews are to go out will be maintained: Boards of regular and extra hostlers will also be maintained." (160a)

Said agreement also contains provisions for the presentation of grievances or disputes as to the application of the agreement through various appeal procedures on the property of railroad (161a). Such matters are thereafter subject to appeal before the National Railroad Adjustment Board or some other appropriate Adjustment Board established pursuant to Section 3 of the Railway Labor Act.

In the latter part of 1969, the railroad determined that it could operate more effectively by a change in the method by which it maintained its crew boards at Toledo, in a manner similar to changes which had been made at other terminals (19a). The crew board as previously maintained at Stanley Yard consisted of a large framework provided with pigeon holes in which were placed wooden pegs (Exh. 15, 69a). Those plugs, by color coding, symbols and names showed the status of crews and employees assigned to work (47-64a). As changes occurred in the operation of assignments, appropriate changes were made in the plugs inserted in the so-called mechanical board (31-32a).

Employees could determine their status or that of other employees on the board by observing the position of the plugs. This was of particular interest in the case of extra men or men assigned to a "pool" who work as needed on a "first in, first out" basis (63-64a).

In addition to observation of the mechanical board, and in the great majority of cases, employees kept themselves advised of their status by telephone calls to the crew dis-

patchers who were assigned at Stanley Yard (30-31a). The actual calling of crews for assignments was done by telephone by the crew dispatchers (62-63a).

The change made by the railroad consisted of substituting printed lists showing the standing of crews and extra men on the crew board for the mechanical crew board at Stanley Yard, and moving the crew dispatcher's office to a location known as the Parcel Post Annex at Toledo, some distance from Stanley Yard.

At the Annex, crew standings were maintained in a manner similar to that in which they had been maintained with the mechanical crew board plugs (69a, 81-84a, 130-1a, 132-136a). Coded and colored cards were arranged in racks in the crew dispatcher's office in a manner very similar to the arrangement of the plugs on the old mechanical board (131-2a). Three times a day these cards were used to produce a "print out", which was a list showing the current status of all the employees on the board. The "print out" sheets were posted at the location of the old mechanical board at Stanley Yard and at other locations in the yards where no crew boards had been maintained. The "print out" sheets contained the same information as the old mechanical board (29a, 131-136a).

In addition, any employee desiring information as to his standing could contact the crew dispatcher by telephone and would be advised of his standing (85a, 86-7a, 155a). The use of the telephone for this purpose continued in much the same manner as it had before the change, and in fact was both before and after the change the principal way in which employees kept themselves advised (29-30a, 86-7a).

Anticipating the proposed changes, the railroad advised the organizations of operating employees, including plaintiff, of the Company's intention in September, 1969 (Ex. 5, 164a). Conferences were held and many suggestions by the organizations for improvements in the new

system were considered and adopted (19-22a, Ex. 9, 171a). Plaintiff, however, through Local Chairman Brooks, protested the changes and contended that they would be in violation of existing agreements especially Rule 5-B-2 and would lead to violation of other rules in the contract (Ex. 6, 165a).

Pursuant to the established grievance procedure, the employees, through Local Chairman Brooks, filed a protest against the action in which they asserted violations of the agreement (Ex. 7, 166a). The General Chairman of the United Transportation Union, Mr. Price, also wrote a letter of protest asserting that an agreement violation was occurring (Ex. 14, 174a). The grievance asserted by the union was being handled in the usual manner under the established grievance procedure (11a, 16-7a, Ex. 1, 161-3a), until suit was filed.

The change in the operating crew boards was made effective on January 7, 1970 and continued until the railroad complied with the injunction of the District Court, issued on April 28, 1970, from which this appeal is taken by restoring the mechanical crew board.

Meantime, under date of January 28, 1970 (after the hearing on application for preliminary injunction), the organization served a notice under Section 6 of the Railway Labor Act which requested revisions in Rule 5-B-2 to provide the maintenance of crew boards at each employee reporting point, that such boards should show current information, and that no change in such boards should be made without agreement (Ex. 17, 175a). Conferences on this notice were held on February 20, 1970, without agreement being reached.

The Court below affirmed the orders of the District Court upon the authority of *Detroit, Toledo & Shore Line Railroad v. Brotherhood of Railroad Trainmen*, 396 U.S. 142 (1969).

## REASONS FOR GRANTING THE WRIT.

### 1. The Decision Below Has Decided an Important Question of Federal Law Which Has Not Been But Should Be Settled by This Court.

That question is whether the District Courts have any jurisdiction over actions by labor organizations to enjoin alleged violations of railroad collective bargaining agreements.

In *Brotherhood of Locomotive Engineers v. Missouri, Kansas, Texas Railroad Company,* 363 U.S. 528 (1960), this Court held that, in enjoining a strike by a union over a dispute as to the interpretation or application of existing agreements, a court may qualify its injunction by conditions imposed under "traditional equitable considerations" p. 531, or by conditions called for to preserve the jurisdiction of the National Railroad Adjustment Board. However, in Footnote 3, on the same page, the Court stated:

> "We did not decide in *Chicago River,* and we do not decide here, whether a federal court can, during the pendency of a dispute before the Board, enjoin a carrier from effectuating the changes which gave rise to and constitute the subject matter of the dispute, independently of any suit by the railroad for equitable relief. As we read the order of the District Court, this case does not involve independent relief for the union."

This Court in the *Missouri, Kansas, Texas* case added an important qualification to the doctrine announced in *Brotherhood of Railroad Trainmen v. Chicago River & Ind. R. Co.,* 353 U.S. 30 (1957) that strikes over disputes as to the interpretation or application of railroad labor agreements are unlawful and could be enjoined. That qualification was that

in issuing such injunctions, conditions might be imposed on equitable grounds or to preserve the jurisdiction of the National Railroad Adjustment Board.

However, as pointed out in Footnote 3 the Court significantly reserved the question of jurisdiction in the federal courts as a matter of independent relief in an action by the union to enjoin a carrier from making changes which gave rise to a dispute as to the interpretation or application of the railroad labor contract This Court has not, to our knowledge, since the *Missouri, Kansas, Texas* case decided that question. It is, however, an important question of federal law and should be decided by this Court.

**2. The Decision of the Court Below Is Directly in Conflict With the Majority of Decisions by Other Courts of Appeals.**

In dealing with suits by railway or airline labor organizations to enjoin alleged violations of collective agreements by railroads or airlines, the Courts of Appeals have generally held that District Courts may not issue injunctions to restrain such alleged violations. Following *Elgin, Joliet & Eastern Railway v. Burley,* 325 U.S. 771 (1945), they have consistently held that such disputes constitute "minor disputes", i.e., disputes as to the interpretation or application of existing agreements, which are subject to arbitration in accordance with the procedures established by the Railway Labor Act or by agreement; and have held that the Courts have no jurisdiction to issue an injunction in such cases.

Courts of Appeals in many cases have held that the administration of collective agreements by railroads and airlines should not be interfered with unless the Company's reliance on existing contracts was obviously insubstantial or frivolous or in cases where the Company's action could not arguably be covered by the agreement. Where these

tests are not met, the Courts have held that injunctions against such alleged violations should not issue.

Typical of these holdings are the following statements of the principles involved:

> "The district court found that the company's conduct constituted a radical departure from the terms of the contract, and that this was therefore a 'major' dispute. The court failed, however, to pursue the critical inquiry as to whether the company's contractual defense was so obviously insubstantial as to be an attempt to circumvent § 6 of the Railway Labor Act. In our view no such finding could be made.
>
> "It may be that the district court's interpretation of the contract will ultimately prove to be correct. But in deciding whether to assume jurisdiction to grant injunctive relief, the court's task is not to interpret the contract. It is to determine whether the contractual defense is frivolous. Otherwise the arbitration machinery mandated by the Railway Labor Act will be dealt a crippling blow. *Cf. Trainmen v. Chicago R. & I. R. Co.*, 353 U.S. 30, 35-39 (1957).
>
> "We hold, therefore, that the union has misconceived its remedy and that the injunction must be vacated." *Airline Stewards & S. Ass'n., Local 550 v. Caribbean Atlantic Airlines,* 412 Fed. 2d 289, 291-292 (CA 1, 1969).
>
> "But we think that, where the railroad asserts a defense based on the terms of the existing collective bargaining agreement, the controversy may not be termed a 'major' dispute unless the claimed defense is so obviously insubstantial as to warrant the inference that it is raised with intent to circumvent the procedures prescribed by § 6 for alteration of existing

agreements." *Southern Railway v. Brotherhood of Locomotive Engineers*, 384 F.2d 323, 327 (CA, D.C., 1967).

To the same effect are the following cases from other circuits:

*Switchmen's Union of North America v. Southern Pacific Co.*, 398 Fed. 2d 443 (CA 10, 1968).

*International Brotherhood of Teamsters, etc. v. Braniff International Airways*, 437 F.2d 1272 (CA 5, 1971).

*Switchmen's Union of North America v. Central of Georgia*, 341 F.2d 213 (CA 5, 1965), cert. den. 382 U.S. 841.

*Dining Car Employees Local No. 385 v. C. M. St. P. & P. RR.*, 323 Fed. 2d 224 (CA 7, 1963).

*Roberts v. L. & NE. Ry.*, 323 F.2d 219 (CA 3, 1963).

*Hilbert v. P.R.R.*, 290 F.2d 881 (CA 7, 1961), cert. den. 368 U.S. 900.

*Brotherhood of Locomotive Firemen & Enginemen v. Central of Georgia RR.*, 199 Fed. 2d 384 (CA 5, 1952).

In the present case the District Court and the Court of Appeals have gone far beyond the jurisdiction of the courts as delineated in those cases and have assumed jurisdiction improperly and in conflict with those decisions.

In its first decision, the District Court, denying the planitiff's motion for a preliminary injunction, commented that the language of the contract though simple was "obscure in its meaning" (App. 38a).

> "As is sometimes the case, simple language can be obscure in its meaning. Is a posted 'print out' a crew board? The answer to this question could be regarded as merely a matter of interpretation of the contract, if in the affirmative. But if the answer is in the negative,

then the defendant's actions are in violation of the contract, and constitute a change in agreed working conditions. The answer is not simple, in either event." (38a)

"At the present time the Court cannot even say that the probabilities favor the plaintiff's position. These factors militate against the allowance of a preliminary injunction." (39a)

This passage is cited to emphasize that the District Court recognized that there was no doubt that the railroad's action was arguably permitted by the existing agreement. The error committed by the District Court and affirmed by the Court of Appeals was in proceeding to a full scale trial in which the question of the interpretation of the agreement was considered on the merits and a decision made that the contract had been violated and did not permit a change in crew boards.

In affirming this decision by the District Court, the Court of Appeals has made a decision in direct conflict with the other cases cited above which would have led to a reversal and dismissal of this action.

The Court of Appeals for the Second Circuit is the only Court of Appeals, to our knowledge, which has indicated that there may be jurisdiction in district courts to enter injunctions in minor disputes situations if the matter is pending before the Adjustment Board. That Court has stated in *Westchester Lodge v. REA*, 329 F.2d 748 (1964) that it does not "find anything in the Railway Labor Act which prohibits a federal court from issuing an injunction to restore the status quo in a minor dispute if the Court's discretion is soundly exercised to preserve the primary jurisdiction of the Adjustment Board" p. 753. However, the actual result in that case was that the Court of Appeals

affirmed the dismissal of an action by a union to enjoin an alleged breach of an agreement with leave to reinstate if the controversy were before the Adjustment Board. In the present case, in contrast to those discussed, the Courts below have held that the dispute as to the application of the collective agreement was a "major dispute" and that the railroad could be restrained by making changes in crew boards until the exhaustion of the major disputes provisions of the Railway Labor Act. This finding is based on the action of the Courts below in considering and deciding the merits of the dispute as to the interpretation and application of the contract. Consideration of the case on this basis is contrary to the many other decisions of the Courts of Appeals cited above.

It is, therefore, submitted that the decision of the Sixth Circuit and the indication from the Second Circuit that injunctions might issue in minor disputes situations are in conflict with the majority of the Courts of Appeals decisions on this matter, and that the conflict should be resolved by this Court.

**3. The Decision of the Court Below Is Believed to Be Erroneous in That It Has Decided a Federal Question in a Way in Conflict With the Principles Well Established by the Decisions of This Court.**

This Court has drawn clear and unmistakable distinctions between so-called "minor" disputes in the railroad industry, *Elgin, Joliet & Eastern v. Burley,* 325 U.S. 771, *Brotherhood of Railroad Trainmen v. Chicago River & Indiana RR. Co.,* 353 U.S. 30, *ORC v. Pitney,* 326 U.S. 561, *PRR v. Day,* 360 U.S. 548; and the so-called "major" disputes involving disputes as to future terms of agreements governing rates of pay, rules and working conditions, *BRT v. Jacksonville Terminal,* 349 U.S. 369, *Detroit, Toledo &*

*Shore Line v. Brotherhood of Railroad Trainmen*, 396 U.S. 142 (1969).

The decisions below clearly reveal that the Courts have misconstrued the nature of the complaint presented and the facts, and have applied totally irrelevant considerations to a situation which essentially involves a "minor dispute".

The entire dispute presented in this case turns upon the meaning of the language "crews boards shall be maintained" which is found in Rule 5-B-2 of the existing collective agreement. No effort is being made by the railroad or the organization to establish rules for the future or to make any change in existing rules. The railroad has contended consistently and in good faith that its action is not in violation of any existing agreement.

The union has argued that the agreement has been violated. These contentions and counter-contentions have given rise to a classical "minor dispute". Yet the District Court, rather than staying its hand pending reference of the matter to the Adjustment Board, held a trial on the merits and decided that the contract had been violated. This was clearly beyond the jurisdiction of "any court, state as well as federal" *Slocum v. D. L. & W.*, 339 U.S. 239 (1950).

Having erroneously permitted the District Court to consider and decide the merits of the contract dispute, the Court of Appeals relied on the doctrine of *Detroit, Toledo & Shore Line v. BRT*, 396 U.S. 142 (1969) and held that the railroad was in violation of Section 6 of the Railway Labor Act. It is submitted that the *Detroit, Toledo & Shore Line* case which held that a carrier may not, during the long process of negotiation in major disputes as to future rates of pay, rules and working conditions change existing working conditions even though they may not be embodied in agreements, has no proper application to the present case. Even though a violation of a contract may have existed here, there is no basis for treating the case in any way as an attempt to do more than apply an existing agreement.

**4. This Case Presents a Second Question of Federal Law Which Has Not Been But Should Be Decided by This Court, Namely the Application of the Norris-LaGuardia Act Where a Railroad Union Seeks to Enjoin an Alleged Violation of a Collective Agreement.**

This Court has recently reaffirmed in *Chicago Northwestern Railroad v. United Transportation Union*, — U.S. —, 91 Sup. Ct. 1731 (1971), the necessity of harmonizing the provisions of the Norris-LaGuardia Act with those of the Railway Labor Act. The Court reaffirmed its holding in *IAM v. Street*, 367 U.S. 740, 772-3 (1961) that under the Norris-LaGuardia Act "courts should hesitate to fix upon the injunctive remedy for breaches of duty under the labor laws unless that remedy alone can effectively guard the plaintiff's right".

Courts of Appeals have recognized that there is no statutory requirement under the Railway Labor Act to maintain the status quo where a dispute as to the interpretation of a collective agreement has arisen.

For example, the Court commented in *Hilbert v. PRB*, 290 F.2d 881 (CA 7, 1961), cert. den. 368 U.S. 900, that the Railway Labor Act imposes no obligation to maintain the status quo during a minor dispute.

The provisions of the Railway Labor Act dealing with minor disputes, specifically Section 2, Sixth and Section 3, may be examined in vain for any legal requirement that the status quo requirement be maintained pending arbitration of a minor dispute. Section 2, Sixth requires conferences with respect to such disputes and Section 3 provides for their arbitration before Adjustment Boards after they have been handled in the usual manner on the property of the company. However, there is no legal command in the Railway Labor Act to refrain from an action merely because of its challenge as a violation of an agreement.

This Court has suggested that the Norris-LaGuardia Act might bar injunctions to prevent alleged violations of collective agreements in other industries. *National Labor Relations Board v. C&C Plywood,* 385 U.S. 421 (1967), page 429, Footnote 15.

The Court below has applied the irrelevant restrictions of Section 6 and other sections dealing with major disputes to the facts in this case.

The question of the relationship of the Norris-LaGuardia Act to the present case presents a question of federal law which has not been but should be decided by this Court.

## CONCLUSION.

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

HERMON M. WELLS,
*Attorney for Trustees of Penn Central Transportation Company.*

August 20, 1971

# APPENDIX A.

## STATUTORY PROVISIONS.

### Railway Labor Act, 45 USCA Section 151 et seq.

GENERAL PURPOSES.

SECTION 2. The purposes of the Act are: (1) To avoid any interruption to commerce or to the operation of any carrier engaged therein; (2) to forbid any limitation upon freedom of association among employees or any denial, as a condition of employment or otherwise, of the right of employees to join a labor organization; (3) to provide for the complete independence of carriers and of employees in the matter of self-organization; (4) to provide for the prompt and orderly settlement of all disputes concerning rates of pay, rules, or working conditions; (5) to provide for the prompt and orderly settlement of all disputes growing out of grievances or out of the interpretation or application of agreements covering rates of pay, rules, or working conditions.

GENERAL DUTIES.

First. It shall be the duty of all carriers, their officers, agents, and employees to exert every reasonable effort to make and maintain agreements concerning rates of pay, rules, and working conditions, and to settle all disputes, whether arising out of the application of such agreements or otherwise, in order to avoid any interruption to commerce or to the operation of any carrier growing out of any dispute between the carrier and the employees thereof.

Second. All disputes between a carrier or carriers and its or their employees shall be considered, and, if possible, decided, with all expedition, in conference between representatives designated and authorized so to confer, respectively, by the carrier or carriers and by the employees thereof interested in the dispute.

Sixth. In case of a dispute between a carrier or carriers and its or their employees, arising out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, it shall be the duty of the designated representative or representatives of such carrier or carriers and of such employees, within ten days after the receipt of notice of a desire on the part of either party to confer in respect to such dispute, to specify a time and place at which such conference shall be held: *Provided*, (1) That the place so specified shall be situated upon the line of the carrier involved or as otherwise mutually agreed upon; and (2) that the time so specified shall allow the designated conferees reasonable opportunity to reach such place of conference, but shall not exceed twenty days from the receipt of such notice: *And provided further*, That nothing in this Act shall be construed to supersede the provisions of any agreement (as to conferences) then in effect between the parties.

NATIONAL BOARD OF ADJUSTMENT; GRIEVANCES; INTERPRETATION AGREEMENTS.

SECTION 3. First. There is hereby established, a Board to be known as the "National Railroad Adjustment Board", the members of which shall be selected within thirty days after approval of this Act, and it is hereby provided—

(a) That the said Adjustment Board shall consist of thirty-six members, eighteen of whom shall be selected by

the carriers and eighteen by such labor organizations of the employees, national in scope, as have been or may be organized in accordance with the provisions of Section 2 of this Act.

(b) The carriers, acting each through its board of directors or its receiver or receivers, trustee or trustees, or through an officer or officers designated for that purpose by such board, trustee or trustees, or receiver or receivers, shall prescribe the rules under which its representatives shall be selected and shall select the representatives of the carriers on the Adjustment Board and designate the division on which each such representative shall serve, but no carrier or system of carriers shall have more than one representative on any division of the Board.

(c) The national labor organizations, as defined in paragraph (a) of this section, acting each through the chief executive or other medium designated by the organization or association thereof, shall prescribe the rules under which the labor members of the Adjustment Board shall be selected and shall select such members and designate the division on which each member shall serve; but no labor organization shall have more than one representative on any division of the Board.

(d) In case of a permanent or temporary vacancy on the Adjustment Board, the vacancy shall be filled by selection in the same manner as in the original selection.

(e) If either the carriers or the labor organizations of the employees fail to select and designate representatives to the Adjustment Board, as provided in paragraphs (b) and (c) of this section, respectively, within sixty days after the passage of this Act, in case of any original appointment to office of a member of the Adjustment Board, or in a case of vacancy in any such office within thirty days after such

vacancy occurs, the Mediation Board shall thereupon directly make the appointment and shall select an individual associated in interest with the carriers or the group of labor organizations of employees, whichever he is to represent.

(f) In the event a dispute arises as to the right of any national labor organization to participate as per paragraph (e) of this section in the selection and designation of the labor members of the Adjustment Board, the Secretary of Labor shall investigate the claim of such labor organization to participate, and if such claim in the judgment of the Secretary of Labor has merit, the Secretary shall notify the Mediation Board accordingly, and within ten days after receipt of such advice the Mediation Board shall request those national labor organizations duly qualified as per paragraph (e) of this section to participate in the selection and designation of the labor members of the Adjustment Board to select a representative. Such representative, together with a representative likewise designated by the claimant, and a third or neutral party designated by the Mediation Board, constituting a board of three, shall within thirty days after the appointment of the neutral member investigate the claims of the labor organization desiring participation and decide whether or not it was organized in accordance with Section 2 hereof and is otherwise properly qualified to participate in the selection of the labor members of the Adjustment Board, and the findings of such boards of three shall be final and binding.

(g) Each member of the Adjustment Board shall be compensated by the party or parties he is to represent. Each third or neutral party selected under the provisions of (f) of this section shall receive from the Mediation Board such compensation as the Mediation Board may fix, together with his necessary traveling expenses and expenses actually incurred for subsistence, or per diem allowance in lieu

thereof, subject to the provisions of law applicable thereto, while serving as such third or neutral party.

(h) The said Adjustment Board shall be composed of four divisions, whose proceedings shall be independent of one another, and the said divisions as well as the number of their members shall be as follows:

First division: To have jurisdiction over disputes involving train-and-yard-service employees of carriers; that is, engineers, firemen, hostlers, and outside hostler helpers, conductors, trainmen, and yard-service employees. This division shall consist of ten members, five of whom shall be selected and designated by the carriers and five of whom shall be selected and designated by the national labor organizations of the employees.

Second division: To have jurisdiction over disputes involving machinists, boilermakers, blacksmiths, sheetmetal workers, electrical workers, carmen, the helpers and apprentices of all the foregoing, coach cleaners, power-house employees, and railroad shop laborers. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of the employees.

Third division: To have jurisdiction over disputes involving station, tower, and telegraph employees, train dispatchers, maintenance-of-way men, clerical employees, freight handlers, express, station, and store employees, signalmen, sleeping-car conductors, sleeping-car porters, and maids and dining-car employees. This division shall consist of ten members, five of whom shall be selected by the carriers and five by the national labor organizations of employees.

Fourth division: To have jurisdiction over disputes involving employees of carriers directly or indirectly engaged

in transportation of passengers or property by water, and all other employees of carriers over which jurisdiction is not given to the first, second, and third divisions. This division shall consist of six members, three of whom shall be selected by the carriers and three by the national labor organizations of the employees.

(i) The disputes between an employee or group of employees and a carrier or carriers growing out of grievances or out of the interpretation or application of agreements concerning rates of pay, rules, or working conditions, including cases pending and unadjusted on the date of approval of this Act, shall be handled in the usual manner up to and including the chief operating officer of the carrier designated to handle such disputes; but, failing to reach an adjustment in this manner, the disputes may be referred by petition of the parties or by either party to the appropriate division of the Adjustment Board with a full statement of the facts and all supporting data bearing upon the disputes.

(j) Parties may be heard either in person, by counsel, or by other representatives, as they may respectively elect, and the several divisions of the Adjustment Board shall give due notice of all hearings to the employee or employees and the carrier or carriers involved in any disputes submitted to them.

(k) Any division of the Adjustment Board shall have authority to empower two or more of its members to conduct hearings and make findings upon disputes, when properly submitted, at any place designated by the division: *Provided, however*, That final awards as to any such disputes must be made by the entire division as hereinafter provided.

(l) Upon failure of any division to agree upon an award because of a deadlock or inability to secure a majority vote of the division members, as provided in paragraph

(n) of this section, then such division shall forthwith agree upon and select a neutral person, to be known as "referee", to sit with the division as a member thereof and make an award. Should the division fail to agree upon and select a referee within ten days of the date of the deadlock or inability to secure a majority vote, then the division, or any member thereof, or the parties or either party to the dispute may certify that fact to the Mediation Board, which Board shall, within ten days from the date of receiving such certificate, select and name the referee to sit with the division as a member thereof and make an award. The Mediation Board shall be bound by the same provisions in the appointment of these neutral referees as are provided elsewhere in this Act for the appointment of arbitrators and shall fix and pay the compensation of such referees.

(m) The awards of the several divisions of the Adjustment Board shall be stated in writing. A copy of the awards shall be furnished to the respective parties to the controversy, and the awards shall be final and binding upon both parties to the dispute. In case a dispute arises involving an interpretation of the award the division of the Board upon request of either party shall interpret the award in the light of the dispute.

(n) A majority vote of all members of the division of the Adjustment Board shall be competent to make an award with respect to any dispute submitted to it.

(o) In case of an award by any division of the Adjustment Board in favor of petitioner, the division of the Board shall make an order, directed to the carrier, to make the award effective and, if the award includes a requirement for the payment of money, to pay to the employee the sum to which he is entitled under the award on or before a day named.

In the event any division determines that an award favorable to the petitioner should not be made in any dispute referred to it, the division shall make an order to the petitioner stating such determination.[4]

(p) If a carrier does not comply with an order of a division of the Adjustment Board within the time limit in such order, the petitioner, or any person for whose benefit such order was made, may file in the District Court of the United States for the district in which he resides or in which is located the principal operating office of the carrier, or through which the carrier operates, a petition setting forth briefly the causes for which he claims relief, and the order of the division of the Adjustment Board in the premises. Such suit in the District Court of the United States shall proceed in all respects as other civil suits, except that on the trial of such suit the findings and order of the division of the Adjustment Board shall be conclusive on the parties,[4] and except that the petitioner shall not be liable for costs in the district court nor for costs at any subsequent stage of the proceedings, unless they accrue upon his appeal, and such costs shall be paid out of the appropriation for the expenses of the courts of the United States. If a petition shall finally prevail he shall be allowed a reasonable attorney's fee, to be taxed and collected as a part of the costs of the suit. The district courts are empowered, under the rules of the court governing actions at law, to make such order and enter such judgment, by writ of mandamus or otherwise, as may be appropriate to enforce or set aside the order of the division of the Adjustment Board: *Provided, however,* That such order may not be set aside except for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to

4. (Public Law 456, 89th Cong.) (H. R. 706); (Approved June 20, 1966).

matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order.[4]

(q) If any employee or group of employees, or any carrier, is aggrieved by the failure of any division of the Adjustment Board to make an award in a dispute referred to it, or is aggrieved by any of the terms of an award or by the failure of the division to include certain terms in such award, then such employee or group of employees or carrier may file in any United States district court in which a petition under paragraph (p) could be filed, a petition for review of the division's order. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Adjustment Board. The Adjustment Board shall file in the court the record of the proceedings on which it based its action. The court shall have jurisdiction to affirm the order of the division or to set it aside, in whole or in part, or it may remand the proceeding to the division for such further action as it may direct. On such review, the findings and order of the division shall be conclusive on the parties, except that the order of the division may be set aside, in whole or in part, or remanded to the division, for failure of the division to comply with the requirements of this Act, for failure of the order to conform, or confine itself, to matters within the scope of the division's jurisdiction, or for fraud or corruption by a member of the division making the order. The judgment of the court shall be subject to review as provided in sections 1291 and 1254 of title 28, United States Code.[4]

(r) All actions at law based upon the provisions of this section shall be begun within two years from the time the

4. (Public Law 456, 89th Cong.) (H. R. 706); (Approved June 20, 1966).

cause of action accrues under the award of the division of the Adjustment Board, and not after.

(s) The several divisions of the Adjustment Board shall maintain headquarters in Chicago, Illinois, meet regularly, and continue in session so long as there is pending before the division any matter within its jurisdiction which has been submitted for its consideration and which has not been disposed of.

(t) Whenever practicable, the several divisions or subdivisions of the Adjustment Board shall be supplied with suitable quarters in any Federal building located at its place of meeting.

(u) The Adjustment Board may, subject to the approval of the Mediation Board, employ and fix the compensations of such assistants as it deems necessary in carrying on its proceedings. The compensation of such employees shall be paid by the Mediation Board.

(v) The Adjustment Board shall meet within forty days after the approval of this Act and adopt such rules as it deems necessary to control proceedings before the respective divisions and not in conflict with the provisions of this section. Immediately following the meeting of the entire Board and the adoption of such rules, the respective divisions shall meet and organize by the selection of a chairman, a vice chairman, and a secretary. Thereafter each division shall annually designate one of its members to act as chairman and one of its members to act as vice chairman: *Provided, however,* That the chairmanship and vice chairmanship of any division shall alternate as between the groups, so that both the chairmanship and vice chairmanship shall be held alternately by a representative of the carriers and a representative of the employees. In case of

a vacancy, such vacancy shall be filed for the unexpired term by the selection of a successor from the same group.

(w) Each division of the Adjustment Board shall annually prepare and submit a report of its activities to the Mediation Board, and the substance of such report shall be included in the annual report of the Mediation Board to the Congress of the United States. The reports of each division of the Adjustment Board and the annual report of the Mediation Board shall state in detail all cases heard, all actions taken, the names, salaries, and duties of all agencies, employees, and officers receiving compensation from the United States under the authority of this Act, and an account of all moneys appropriated by Congress pursuant to the authority conferred by this Act and disbursed by such agencies, employees, and officers.

(x) Any division of the Adjustment Board shall have authority, in its discretion, to establish regional adjustment boards to act in its place and stead for such limited period as such division may determine to be necessary. Carrier members of such regional boards shall be designated in keeping with rules devised for this purpose by the carrier members of the Adjustment Board and the labor members shall be designated in keeping with rules devised for this purpose by the labor members of the Adjustment Board. Any such regional board shall, during the time for which it is appointed, have the same authority to conduct hearings, make findings upon disputes, and adopt the same procedure as the division of the Adjustment Board appointing it, and its decisions shall be enforceable to the same extent and under the same processes. A neutral person, as referee, shall be appointed for service in connection with any such regional adjustment board in the same circumstances and manner as provided in paragraph (1) hereof, with respect to a division of the Adjustment Board.

Second. Nothing in this section shall be construed to prevent any individual carrier, system, or group of carriers and any class or classes of its or their employees, all acting through their representatives, selected in accordance with the provisions of this Act, from mutually agreeing to the establishment of system, group, or regional boards of adjustment for the purpose of adjusting and deciding disputes of the character specified in this section. In the event that either party to such a system, group, or regional board of adjustment is dissatisfied with such arrangement, it may upon ninety days' notice to the other party elect to come under the jurisdiction of the Adjustment Board.

If written request is made upon any individual carrier by the representative of any craft or class of employees of such carrier for the establishment of a special board of adjustment to resolve disputes otherwise referable to the Adjustment Board, or any dispute which has been pending before the Adjustment Board for twelve months from the date the dispute (claim) is received by the Board, or if any carrier makes such a request upon any such representative, the carrier or the representative upon whom such request is made shall join in an agreement establishing such a board within thirty days from the date such request is made. The cases which may be considered by such board shall be defined in the agreement establishing it. Such board shall consist of one person designated by the carrier and one person designated by the representative of the employees. If such carrier or such representative fails to agree upon the establishment of such a board as provided herein, or to exercise its rights to designate a member of the board, the carrier or representative making the request for the establishment of the special board may request the Mediation Board to designate a member of the special board on behalf of the carrier or representative upon whom such request was made. Upon receipt of a request for such designation

the Mediation Board shall promptly make such designation and shall select an individual associated in interest with the carrier or representative he is to represent, who, with the member appointed by the carrier or representative requesting the establishment of the special board, shall constitute the board. Each member of the board shall be compensated by the party he is to represent. The members of the board so designated shall determine all matters not previously agreed upon by the carriers and the representative of the employees with respect to the establishment and jurisdiction of the board. If they are unable to agree such matters shall be determined by a neutral member of the board selected or appointed and compensated in the same manner as is hereinafter provided with respect to situations where the members of the board are unable to agree upon an award. Such neutral member shall cease to be a member of the board when he has determined such matters. If with respect to any dispute or group of disputes the members of the board designated by the carrier and the representative are unable to agree upon an award disposing of the dispute or group of disputes they shall by mutual agreement select a neutral person to be a member of the board for the consideration and disposition of such dispute or group of disputes. In the event the members of the board designated by the parties are unable, within ten days after their failure to agree upon the award, to agree upon the selection of such neutral person, either member of the board may request the Mediation Board to appoint such neutral person and upon receipt of such request the Mediation Board shall promptly make such appointment. The neutral person so selected or appointed shall be compensated and reimbursed for expenses by the Mediation Board. Any two members of the board shall be competent to render an award. Such awards shall be final and binding upon both parties to the dispute and if in favor of the petitioner, shall direct the other party

to comply therewith on or before the day named. Compliance with such awards shall be enforceable by proceedings in the United States district courts in the same manner and subject to the same provisions that apply to proceedings for enforcement of compliance with awards of the Adjustment Board.[4]

SECTION 6. Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or working conditions shall not be altered by the carrier until the controversy has been finally acted upon as required by Section 5 of this Act, by the Mediation Board, unless a period of ten days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board.

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4. (Public Law 456, 89th Cong.) (H. R. 706); (Approved June 20, 1966).

## Norris-LaGuardia Act, 29 USCA Sec. 101-113.

SEC. 1. That no court of the United States, as herein defined, shall have jurisdiction to issue any restraining order or temporary or permanent injunction in a case involving or growing out of a labor dispute, except in a strict conformity with the provisions of this Act; nor shall any such restraining order or temporary or permanent injunction be issued contrary to the public policy declared in this Act.

SEC. 7. No court of the United States shall have jurisdiction to issue a temporary or permanent injunction in any case involving or growing out of a labor dispute, as herein defined, except after hearing the testimony of witnesses in open court (with opportunity for cross-examination) in support of the allegations of a complaint made under oath, and testimony in opposition thereto, if offered, and except after findings of fact by the court, to the effect—

(a) That unlawful acts have been threatened and will be committed unless restrained or have been committed and will be continued unless restrained, but no injunction or temporary restraining order shall be issued on account of any threat or unlawful act excepting against the person or persons, association, or organization making the threat or committing the unlawful act or actually authorizing or ratifying the same after actual knowledge thereof;

(b) That substantial and irreparable injury to complainant's property will follow;

(c) That as to each item of relief granted greater injury will be inflicted upon complainant by the denial of relief than will be inflicted upon defendants by the granting of relief;

(d) That complainant has no adequate remedy at law; and

(e) That the public officers charged with the duty to protect complainant's property are unable or unwilling to furnish adequate protection. * * * *

SEC. 13. When used in this Act, and for the purposes of this Act—

(a) A case shall be held to involve or to grow out of a labor dispute when the case involves persons who are engaged in the same industry, trade, craft, or occupation; or have direct or indirect interests therein; or who are employees of the same employer; or who are members of the same or an affiliated organization of employers or employees; whether such dispute is (1) between one or more employers or associations of employers and one or more employees or associations of employees; (2) between one or more employers or associations of employers and one or more employers or associations of employers; or (3) between one or more employees or associations of employees and one or more employees or associations of employees; or when the case involves any conflicting or competing interests in a "labor dispute" (as hereinafter defined) of "persons participating or interested" therein (as hereinafter defined).

(b) A person or association shall be held to be a person participating or interested in a labor dispute if relief is sought against him or it, and if he or it is engaged in the same industry, trade, craft, or occupation in which such dispute occurs, or has a direct or indirect interest therein, or is a member, officer, or agent of any association composed in whole or in part of employers or employees engaged in such industry, trade, craft, or occupation.

(c) The term "labor dispute" includes any controversy concerning terms or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaing, changing, or seeking to arrange terms or conditions of employment, regardless of whether or not the disputants stand in the proximate relation of employer and employee.

(d) The term "court of the United States" means any court of the United States whose jurisdiction has been or may be conferred or defined or limited by Act of Congress, including the courts of the District of Columbia.

## APPENDIX B.

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

No. C 70-6.

UNITED TRANSPORTATION UNION, LOCAL 63E,
*Plaintiff,*

*v.*

PENN CENTRAL COMPANY,
*Defendant.*

### MEMORANDUM.

YOUNG, *J:*

This case involves a labor dispute between the parties, and came on to be heard upon plaintiff's motion for a preliminary injunction to maintain the status quo until the parties could exhaust the remedies available under the major disputes provisions of the Railway Labor Act. As usual, the railroad's habit of doing what is most convenient to it regardless of the effect upon anyone else has brought about an impasse which, fortunately, has resulted in litigation rather than a strike.

The evidence offered at the hearing was not without conflict in the testimony of the witnesses, but it is possible

to reach factual conclusions which are clearly supported by the evidence adduced.

The dispute arises over Section 5-B-2 of the contract between the parties, which reads as follows:

> "5-B-2. Crew boards (h). Crew boards showing the order in which crews are to go out will be maintained. Board of regular and extra hostlers will also be maintained."

The evidence establishes that for some seventy-five years prior to the commencement of this action, crew boards have been rather large boards full of holes. Pegs which may be placed in the various holes convey to the workmen whose names are on the pegs very considerable information about their seniority and work assignments, and enable them to predict with considerable accuracy when next they will be called to work. These crew boards were kept current as to the information displayed by dispatchers who were located in offices adjacent to the boards. Although this is disputed by the defendant, the plaintiff's evidence indicated that these dispatchers usually posted promptly any changes in the status of the crew members.

Commencing January 8, 1970, the defendant removed the dispatchers to a central office, ceased to make changes on the old crew boards, and instead posted so-called "print-outs" which are typed sheets of paper, eight and one-half by fourteen inches in size. Defendant claims the "print-outs" contain in printed form all the information which was conveyed in visual form by the old crew boards. These "print-outs" are posted three times a day, at the beginning of each shift.

The evidence establishes that the "print-outs" do not in fact contain all of the information which was shown on the mechanical crew boards, especially information concern-

ing the over-all seniority of the employees, and mileage run by them, and perhaps some other information somewhat less consequential. The evidence also establishes that the "print-outs" are sometimes less timely in conveying information than were the mechanical crew boards, and that it is much more difficult for the employees to decipher the information on the "print-outs" than to decipher the mechanical crew boards, so much so that on occasions when an employee called a dispatcher for information, the dispatcher could not give it to him because not even the dispatcher could decipher the "print-out", or because the cards from which the "print-out" was prepared were out of the office.

The defendant pointed out, in a skillful attempt to avoid the issues, that most of the employees had been accustomed to call the dispatchers rather than to go to look at the mechanical crew boards, and that there were still on duty the same number of dispatchers and still available the same number of telephone lines for this purpose.

The evidence shows, however, that when the defendant abandoned the mechanical crew boards, it gathered all the dispatchers into a central office. Under the old crew board system, when an employee came off work at the end of his shift, he made out his time slip, handed it to the dispatcher, looked at the crew board, and went about his personal affairs. Under the new "print-out" system, the employee coming off work is required to call the central dispatcher's office and give the clerk there the information contained on his time slip. He then puts the time slip into a metal receiving box, and attempts to decipher the "print-out" before he can go about his own business. Since there are the same number of dispatchers and telephone lines as before, but a much greater number of telephone calls to give time slip data by the men coming off duty at the end of the shift, it often takes from fifteen to thirty minutes

of the employee's personal, uncompensated, time to make the required report before he can leave. Also, because of the difficulty in deciphering the "print-outs", the volume of calls to the dispatcher for information had increased to the point that an employee calling in often had to wait while the telephone rang fifty times before it was answered.

There is an old saying that one picture is worth a thousand words. The substitution of the "print-outs" for the mechanical crew board is, in effect, the substitution of the words for the picture. At the same time, it is quite apparent that there are very few mechanical practices that were valid and efficient seventy-five years ago, when labor was cheap, that are still useful today. The burden of using outmoded mechanical devices should be eliminated if possible.

From a practical standpoint, it would seem that there would be no real problem in electrifying and centrally controlling visual information devices that would combine the pictorial advantages of the old mechanical crew boards with the electronic efficiency and centralized control that produces the "print-outs". It would also seem possible, if there had to be a change from the filing of written time slips to a verbal reporting of time slip data, to set up a system of additional or special telephone lines with extra clerks or recording devices so that the reporting employee could give his report without long and frustrating delays. Obviously, with a railroad's usual lack of consideration, the defendant made halfway changes which were convenient to it without taking the trouble to think through the problems that the changes posed for the plaintiff's members. It seems clear that there is considerable room for serious negotiations which could lead to a solution of the difficulties here involved. The evidence indicated that what little discussion there had been before this action arose was

plagued with mistake, misunderstandings, and failures of the mail to deliver communications, all of which is most unfortunate.

Unhappily, the legal consequences of the factual situation are by no means simple or easily resolved. The law is clear that if the factual situation presents a major dispute, that is, if the actions of the defendant amount to a change in the conditions of the contract between the parties, this Court has jurisdiction to enjoin the making of the changes in order to preserve the status quo until the procedures provided for resolution of the dispute have been exhausted. On the other hand, if the dispute is a minor dispute, that is, if it concerns merely a matter of interpretation of the contract between the parties, then this Court has no jurisdiction whatever, and the action must be dismissed.

Usually it requires little or no evidence to show with reasonable clarity whether a particular dispute is major or minor. In the present case, however, there is no such clarity. As is sometimes the case, simple language can be obscure in its meaning. Is a posted "print-out" a crew board? The answer to this question could be regarded as merely a matter of interpretation of the contract, if in the affirmative. But if the answer is in the negative, then the defendant's actions are in violation of the contract, and constitute a change in agreed working conditions. The answer is not simple, in either event.

Although a skillful and conscientious effort was made by counsel for both parties to present, in the brief compass of a hearing upon a motion for a preliminary injunction, sufficient evidence for the Court to decide this question, it was impossible for them to do so. The issue involved here can only be resolved by a complete hearing, in which there can be a sufficient demonstration of the man-

ner of using both the mechanical crew board and the "print-outs". These are both so complicated from a layman's point of view that it will take a considerable quantity of much more detailed evidence and explanation than that given at the motion hearing to enable the Court to reach a correct conclusion.

The fundamental legal questions still remain, and must necessarily remain, until this action can be heard upon its merits. Until such hearing, it is impossible for the Court even to determine whether it has jurisdiction in the case. This makes it peculiarly difficult to rule on the motion for a preliminary injunction, for if upon the merits it is determined that the Court has no jurisdiction, there could be no injunction. At the present time the Court cannot even say that the probabilities favor the plaintiff's position. These factors militate against the allowance of a preliminary injunction. The refusal of a preliminary injunction will certainly work serious hardship upon the plaintiff's membership unless the defendant takes prompt steps to remedy the telephone service, or ceases to require both verbal and written filing of time slips. On the other hand, granting such an injunction would impose very considerable financial burdens upon the defendant.

It would appear that the most equitable disposition of this dilemma is to refuse the preliminary injunction, but set the case for hearing upon its merits at the earliest possible moment. Hearing upon the merits should not require any great amount of advance notice when the parties understand that there will be no great length of time before the case can be worked into the calendar. While the Court's trial assignment appears to be firm well into next fall, as a practical matter, there are always opportunities to work a case into the assignment if it can be called at short notice. Assuming that this case could

be heard on the merits in two or three days of trial time, the prospects are good that a trial could be scheduled within the next four to six weeks.

The Court will expect the parties to be ready to go to trial on three or four days notice, at some time before the end of March, 1970. No irreparable injuries should be suffered by anyone in that short a time. With this understanding, the plaintiff's motion for a preliminary injunction will be overruled, and an order will be entered accordingly.

DON J. YOUNG,
*United States District Judge.*

TOLEDO, OHIO.

## APPENDIX C.

IN THE
UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION.

No. C 70–6.

UNITED TRANSPORTATION UNION, LOCAL 63E,
*Plaintiff,*

*v.*

PENN CENTRAL COMPANY,
*Defendant.*

### OPINION.

YOUNG, *J.*:

This action involves a labor dispute between the parties. The plaintiff seeks an injunction requiring the defendant to maintain the status quo until the parties can exhaust the remedies available under the major dispute provisions of the Railway Labor Act.

The Court originally denied plaintiff's motion for a preliminary injunction, since it was not possible to tell from the evidence presented at the hearing on the motion whether the action presented a major dispute, in which case the Court had jurisdiction to grant the relief sought, or a minor dispute, in which the Court had no jurisdiction.

The matter has now been heard upon the merits, and it is possible to reach a proper conclusion upon the basis of the evidence adduced at the hearing.

The dispute arises over Section 5-B-2 (and some related sections) of the contract between the parties. This section reads as follows:

> "5-B-2. Crew boards (h). Crew boards showing the order in which crews are to go out will be maintained. Board of regular and extra hostlers will also be maintained."

The plaintiff introduced in evidence a slightly simplified model of a crew board. The model differs from the regular crew boards in being somewhat smaller, and having oblong rather than round pegs bearing the information supplied by the board. By this exhibit it was demonstrated that the standard crew boards, which had been maintained for some seventy-five years prior to the commencement of this action, gave in highly visual form very considerable information about seniority and work assignments. Changes could be made on the crew board within a matter of seconds, so that the board showed the current status of a constantly changing work situation. Because of its large size and conspicuous markings and color codings, the crew board could be read quickly and simultaneously by a number of persons.

The dispute which is the basis of this action arose when the defendant, on January 7, 1970, discontinued the operation of the crew boards, and substituted what for the sake of convenience will be referred to as "print-outs". These "print-outs" are typed sheets of paper, eight and one-half by fourteen inches in size. From six to ten of these sheets are posted at the beginning of each of the three daily shifts, in lieu of maintaining the crew boards.

Reduced to its essentials, the defendant's contention is that the contract provisions requiring the maintenance of crew boards is satisfied by the thrice daily posting of the print-outs, which defendant claims set in typewritten form all of the information which appeared on the old mechanical crew boards. From this factual assertion, the defendant argues that since the contract between the parties does not define the term "crew boards" the question of whether posted print-outs constitute a crew board is merely one of interpretation of the contract, and hence this case involves only a minor dispute, concerning which this Court has no jurisdiction.

There can be no doubt, however, that the contract requires the defendant to maintain crew boards, and its failure or refusal to do so would clearly amount to a change in the conditions of the contract, which this Court has jurisdiction to enjoin in order to preserve the status quo until the procedures provided for resolution of the dispute have been exhausted.

The evidence clearly showed several things, some of which are merely matters of background, and others of which bear heavily on the determination of the dispute. Among the background matters are the fact that the plaintiff's members never relied exclusively upon the crew boards for information, but were accustomed to call the dispatcher to get it, and the fact that a great many more serious errors in work assignments have occurred since the crew boards have been replaced by the print-outs.

Some other matters shown in the evidence, however, are of importance in resolving the dispute.

It clearly appears that it is far more difficult to obtain information from the print-outs as they were shown in evidence than from the mechanical crew board. The whole working situation may be taken in by a moment's study

of the crew board, and that without blocking or impeding others who are simultaneously seeking information. The print-outs can be read only by one individual at a time, and since there are some six to ten pages of typewritten information to be examined, that one individual must spend several minutes in the examination.

A corollary to this difficulty is that vacancies which appear on the crew board as a conspicuous red plug appear on the print-out merely as three X's in the same size and color of type as everything else on the page.

Another corollary to this difficulty is that the detection from the print-outs of various errors in assignments which can and do occur is difficult almost to the point of impossibility. If by chance a crewman learns that an error in assignments has been made to his detriment, a considerable amount of meticulous reading of the print-out is required to demonstrate it.

Perhaps the most important demonstrated difference between the crew boards and the print-outs is in the matter of timeliness. The print-outs are posted three times a day, and reflect the status of assignments and priorities at the time they are prepared. During the succeeding eight hours, numerous changes occur, but they cannot appear on the print-out until the next one is issued. Since each succeeding print-out reflects only the situation at the moment it is prepared, interim changes may not appear on the print-out at all, and a print-out may be, and often is, invalid and inaccurate as a source of information at the exact moment it is posted.

The evidence finally disclosed that the information which is contained in the print-outs is compiled by the use of cards which are fed into a machine shortly before the time for posting the print-outs. Except for the short time that these cards are in the machine, the cards are kept in a

rack, which is accessible only to the dispatchers. The cards are color-coded, and the combination of cards and rack is very similar to the discontinued mechanical crew boards. The cards and rack are handled as the crew boards were handled, by changing the positions of the cards immediately upon the occurrence of any change in the work situation. When one of plaintiff's members telephones the dispatcher for information as to his current work status, the dispatcher does not make reference to the print-out, but to the rack of cards.

The evidence impels irresistibly to the conclusion that the posting of print-outs three times daily is not equivalent to maintaining a crew board as required by the agreement between the parties. This is not to say that the old hand-operated crew boards may not be replaced by crew boards which are operated automatically or electronically. However, the essential features of high visibility and accurate reflection of the current situation must characterize any replacement so long as the contract requires crew boards to be maintained.

The evidence does not reveal a mere dispute over the meaning of the language in the contract, for it clearly shows that the defendant's print-outs are not just another form of crew board. They are not what a crew board is, and they do not do what a crew board does. Consequently, the dispute between the parties is not a minor one, but concerns an attempt by the defendant to change the very terms of the contract. Defendant's actions amount to a change in working conditions, and create a major dispute.

This Court has jurisdiction to require that the status quo be maintained until the parties have exhausted the remedies available to them under the Railway Labor Act. The evidence discloses that the initial steps have been taken in this direction. Until they have been concluded, an order

will issue requiring the defendant to continue to maintain the old mechanical crew boards or to provide a substitute which conforms to the elements set forth in this opinion.

This opinion will serve as the Court's findings of fact and conclusions of law. Counsel may fix and submit a judgment entry in accordance with the Rules of this Court.

DON J. YOUNG

Toledo, Ohio.

## APPENDIX D.

No. 20572.

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT.

UNITED TRANSPORTATION UNION, LOCAL 63E,
*Plaintiff-Appellee,*

*v.*

PENN CENTRAL COMPANY,
*Defendant-Appellant.*

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF OHIO, WESTERN DIVISION.

## OPINION.

Decided and Filed May 27, 1971.

Before: WEICK and EDWARDS, *Circuit Judges*, and O'SULLIVAN, *Senior Circuit Judge*.

EDWARDS, *Circuit Judge*. This is an appeal by defendant-appellant Penn Central Company from an order of a District Judge in the United States District Court for the Northern District of Ohio which granted an injunction re-

straining the railroad from substituting computer prepared "print outs" of employees' work schedules instead of mechanical "crew boards."

The sole question posed by this appeal, as we see it, is whether or not Penn Central's unilateral change from "crew boards" to "print outs" as a method of informing their employees of work availability created a major dispute within the meaning of the Railway Labor Act. The District Judge held that the dispute was a "major" one. He found:

> "The evidence does not reveal a mere dispute over the meaning of the language in the contract, for it clearly shows that the defendant's print-outs are not just another form of crew board. They are not what a crew board is, and they do not do what a crew board does. Consequently, the dispute between the parties is not a minor one, but concerns an attempt by the defendant to change the very terms of the contract. Defendant's actions amount to a change in working conditions, and create a major dispute."

The District Judge ordered that the injunction remain in full force until "such time as the parties have exhausted all the remedies available to them or either of them under the Railway Labor Act."

The labor-management agreement between these two contesting parties provided in part:

> "Crew boards (h). Crew boards showing the order in which crews are to go out will be maintained. Boards of regular and extra hostlers will also be maintained."

For 75 years the company maintained mechanical crew boards, which consisted of a large pegboard and colored pegs. These boards served to inform workers at a brief glance when they would be called for work, what their order

was, what openings were available and when. The company decided to alter this operation and move it to a central office (six miles away and not accessible to employees). There employing a board of a very similar nature (but employing colored cards in place of pegs) a scheduler would plot any crew changes and feed the information into a computer. The company then posted "print outs" drawn from the computer three times a day. The print outs are typewritten 8" x 14" pieces of paper. Usually six or eight pages were posted at one time.

Penn Central's position is that the print outs represented a permissible and acceptable form of "crew boards" within the meaning of the agreement, that they provided the employees with the same information, and that in any event, the District Judge was completely without authority to issue his injunction, whether the dispute was major or minor, and whether it did or did not apply to contract interpretation.

The union's [1] position, on the other hand, is that the crew boards were central to the entire employment operation, that they were relied upon heavily by employees in determining the time off which they had available for rest and recreation and family duties, that the new system could not be termed a crew board under any stretch of the imagination, that in fact this was a unilateral alteration of a working condition prohibited by the Railway Labor Act, and that under *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co.*, 394 U.S. 369 (1969), and other cases, the District Judge had ample authority to issue the injunction which he issued.

It is clear that the union objected repeatedly (both before and after the change) to substitution of the print outs for the crew boards. The union also filed a section 6 notice

1. United Transportation Union, Local 63E.

under 45 U.S.C. § 156. It is also clear that the company proceeded to abolish the old crew boards and substitute the print outs without advance notice or conference, as called for in the same statute.

A general status quo provision is contained in 45 U.S.C. § 152(7) (1964):

> *"Change in pay, rules, or working conditions contrary to agreement or to section 156 forbidden*
>
> "Seventh. No carrier, its officers, or agents shall change the rates of pay, rules, or working conditions of its employees, as a class, as embodied in agreements except in the manner prescribed in such agreements or in section 156 of this title."

The major dispute provision invoked by the union provides:

> "Carriers and representatives of the employees shall give at least thirty days' written notice of an intended change in agreements affecting rates of pay, rules, or working conditions, and the time and place for the beginning of conference between the representatives of the parties interested in such intended changes shall be agreed upon within ten days after the receipt of said notice, and said time shall be within the thirty days provided in the notice. In every case where such notice of intended change has been given, or conferences are being held with reference thereto, or the services of the Mediation Board have been requested by either party, or said Board has proffered its services, rates of pay, rules, or *working conditions shall not be altered by the carrier until the controversy has been finally acted upon, as required by section 155 of this title, by the Mediation Board,* unless a period of ten

days has elapsed after termination of conferences without request for or proffer of the services of the Mediation Board." 45 U.S.C. § 156 (1964). (Emphasis added.)

In the *Railroad Trainmen* case, Justice Harlan supplied this succinct summary of the provisions of the Railway Labor Act which we believe to be applicable here:

> "The Act provides a detailed framework to facilitate the voluntary settlement of major disputes. A party desiring to effect a change of rates of pay, rules, or working conditions must give advance written notice. § 6. The parties must confer, § 2 Second, and if conference fails to resolve the dispute, either or both may invoke the services of the National Mediation Board, which may also proffer its services *sua sponte* if it finds a labor emergency to exist. § 5 First. If mediation fails, the Board must endeavor to induce the parties to submit the controversy to binding arbitration, which can take place, however, only if both consent. §§ 5 First, 7. If arbitration is rejected and the dispute threatens 'substantially to interrupt interstate commerce to a degree such as to deprive any section of the country of essential transportation service, the Mediation Board shall notify the President,' who may create an emergency board to investigate and report on the dispute. § 10. *While the dispute is working its way through the stages, neither party may unilaterally alter the status quo.* §§ 2 *Seventh*, 5 First, 6, 10." (Emphasis added.) *Brotherhood of Railway Trainmen v. Jacksonville Terminal Co., supra* at 378.

Subsequently Justice Black added this comment on the status quo requirement:

"The Act's status quo requirement is central to its design. Its immediate effect is to prevent the union from striking and management from doing anything that would justify a strike. In the long run, delaying the time when the parties can resort to self-help provides time for tempers to cool, helps create an atmosphere in which rational bargaining can occur, and permits the forces of public opinion to be mobilized in favor of a settlement without a strike or lockout. Moreover, since disputes usually arise when one party wants to change the status quo without undue delay, the power which the Act gives the other party to preserve the status quo for a prolonged period will frequently make it worthwhile for the moving party to compromise with the interests of the other side and thus reach agreement without interruption to commerce.

"There are three status quo provisions in the Act, each covering a different stage of the major dispute settlement procedures. Section 6, the section of immediate concern in this case, provides that 'rates of pay, rules, or working conditions shall not be altered' during the period from the first notice of a proposed change in agreements up to and through any proceedings before the National Mediation Board. Section 5 First provides that for 30 days following the closing of Mediation Board proceedings 'no change shall be made in the rates of pay, rules, or working conditions or established practices in effect prior to the time the dispute arose,' unless the parties agree to arbitration or a Presidential Emergency Board is created during the 30 days. Finally, § 10 provides that after the creation of an Emergency Board and for 30 days after the Board has made its report to the President, 'no change, except by agreement, shall be made by the parties to

> the controversy in the conditions out of which the dispute arose.' These provisions must be read in conjunction with implicit status quo requirement in the obligation imposed upon both parties by § 2 First, 'to exert every reasonable effort' to settle disputes without interruption to interstate commerce." (Footnotes omitted.) *Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union,* 396 U.S. 142, 150-51 (1969).

Thus we believe that it is settled law that the unilateral changing of "working conditions" is prohibited by the Railway Labor Act without full compliance with its terms.

What has been said thus far does not, however, dispose of the question as to whether factually what is involved in this dispute is a unilateral change of a "working condition."

On this issue the District Judge held:

> "There can be no doubt, however, that the contract requires the defendant to maintain crew boards, and its failure or refusal to do so would clearly amount to a change in the conditions of the contract, which this Court has jurisdiction to enjoin in order to preserve the status quo until the procedures provided for resolution of the dispute have been exhausted.
>
> "The evidence clearly showed several things, some of which are merely matters of background, and others of which bear heavily on the determination of the dispute. Among the background matters are the fact that the plaintiff's members never relied exclusively upon the crew boards for information, but were accustomed to call the dispatcher to get it, and the fact that a great many more serious errors in work assignments have oc-

curred since the crew boards have been replaced by the print-outs.

"Some other matters show in the evidence, however, are of importance in resolving the dispute.

"It clearly appears that it is far more difficult to obtain information from the print-outs as they were shown in evidence than from the mechanical crew board. The whole working situation may be taken in by a moment's study of the crew board, and that without blocking or impeding others who are simultaneously seeking information. The print-outs can be read only by one individual at a time, and since there are some six to ten pages of typewritten information to be examined, that one individual must spend several minutes in the examination.

"A corollary to this difficulty is that vacancies which appear on the crew board as a conspicuous red plug appear on the print-out merely as three X's in the same size and color of type as everything else on the page.

"Another corollary to this difficulty is that the detection from the print-outs of various errors in assignments which can and do occur is difficult almost to the point of impossibility. If by chance a crewman learns that an error in assignments has been made to his detriment a considerable amount of meticulous reading of the print-out is required to demonstrate it.

"Perhaps the most important demonstrated difference between the crew boards and the print-outs is in the matter of timeliness. The print-outs are posted three times a day, and reflect the status of assignments and priorities at the time they are prepared. During

the succeeding eight hours, numerous changes occur, but they cannot appear on the print-out until the next one is issued. Since each succeeding print-out reflects only the situation at the moment it is prepared, interim changes may not appear on the print-out at all, and a print-out may be, and often is, invalid and inaccurate as a source of information at the exact moment it is posted.

"The evidence finally disclosed that the information which is contained in the print-outs is compiled by the use of cards which are fed into a machine shortly before the time for posting the print-outs. Except for the short time that these cards are in the machine, the cards are kept in a rack, which is accessible only to the dispatchers. The cards are color-coded, and the combination of cards and rack is very similar to the discontinued mechanical crew boards. The cards and rack are handled as the crew boards were handled, by changing the positions of the cards immediately upon the occurrence of any change in the work situation. When one of plaintiff's members telephones the dispatcher for information as to his current work status, the dispatcher does not make reference to the print-out, but to the rack of cards.

"The evidence impels irresistibly to the conclusion that the posting of print-outs three times daily is not equivalent to maintaining a crew board as required by the agreement between the parties. This is not to say that the old hand-operated crew boards may not be replaced by crew boards which are operated automatically or electronically. However, the essential features of high visibility and accurate reflection of the current situation must characterize any replacement so long as the contract requires crew boards to be maintained.

"The evidence does not reveal a mere dispute over the meaning of the language in the contract, for it clearly shows that the defendant's print-outs are not just another form of crew board. They are not what a crew board is, and they do not do what a crew board does. Consequently, the dispute between the parties is not a minor one, but concerns an attempt by the defendant to change the very terms of the contract. Defendant's actions amount to a change in working conditions, and create a major dispute."

We have read the transcript of evidence in this case and find ample support for the view of the facts set forth above from the opinion of the District Judge.

Like the District Judge, we believe that appellant's change from "crew boards" to "print-outs" was a unilateral change of working conditions prohibited by 45 U.S.C. § 156 except in compliance with the terms thereof. Further, the District Judge clearly considered and in our view properly rejected appellant's contentions that what was involved herein was a mere dispute over contract interpretation. *Cf. Airlines Stewards & Stewardesses Assoc., Local 550 v. Caribbean Atlantic Airlines, Inc.*, 412 F.2d 289 (1st Cir. 1969); *Southern Railway Co. v. Brotherhood of Locomotive Firemen & Enginemen*, 384 F.2d 323 (D.C. Cir. 1967).

This case has many parallel aspects to the *Shore Line* case where under somewhat more difficult facts the United States Supreme Court recently held that this same District Court had jurisdiction to enter an injunction to maintain the status quo pending mediation. *Detroit & Toledo Shore Line Railroad Co. v. United Transportation Union*, 396 U.S. 142 (1969).

The judgment of the District Court is affirmed.